IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 8127 OF 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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RAMESHCHANDRA K. KADIYA - Petitioner(s)
Versus
STATE OF GUJARAT & ANR. - Respondent(s)

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Appearance :
Ms. Kalpana Brahmbhatt, learned Counsel under the authority of
Ms. Vasuben P. Shah for Petitioner(s) .
Mr. L.R. Pujari, Assistant Government Pleader for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 01/12/2006

ORAL JUDGMENT

Heard the learned Advocates for the parties.

2. By this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge

the correctness, validity and propriety of Order dated 7th December, 1992 passed by the Collector in Case No.LND/Sh. Bhan.Case-2-92 (Annexure-E) and Order dated 13-12-1994 / 11-01-1994 passed by the Deputy Secretary (Disputes), Revenue Department, in Case No.SRD/BKHM/SBR/3/93.

3. On 24th July, 1992, the Collector, Sabarkantha issued a show cause notice to the petitioner informing that the petitioner had raised construction of 132 sq. yards beyond the sanctioned plan and as the said construction was patently illegal, the petitioner should show cause as to why the additional construction be not demolished.

3.1 The petitioner appeared before the Collector and filed his reply. It was submitted before the Collector that in accordance with the Government Resolution dated 2nd February, 1980, the Competent Officer being entitled to compound the wrong, under the circumstances, the Collector should regularise the construction.

3.2 The Collector, *vide* his Order dated 7th December, 1992, came to the conclusion that the petitioner had made illegal construction and that on an earlier occasion also, the petitioner had raised certain constructions, which on an application were regularised

and the wrong was compounded. The Collector ultimately held that the petitioner being habitual in making illegal construction would not be entitled to any order of regularisation. The said order was confirmed in appeal by the Deputy Secretary (Disputes).

4. Ms.Brahmbhatt, learned Counsel for the petitioner, submits that the Government Resolution dated 2nd February, 1980 does not talk of one time settlement, therefore, the Collector could not say that there had been compounding on an earlier occasion, therefore, the benefits would not be extended. According to her, every illegal construction would provide a fresh cause of action and every fresh cause of action would provide right to make an application for compounding or regularisation.

5. In the opinion of this Court, the Resolution dated 2nd February, 1980 if is appreciated in its true perspective, it would show that the Government was proposing to regularise the illegal constructions, which were already in existence on 2nd February, 1980, it was not giving right to every citizen to raise illegal construction and take the benefit under the said Resolution. The resolution was not to amend the law or make the existing law nugatory. The Government was simply providing a respite to persons who had spent a good

fortune in making some or the other construction, but, was not giving a license to anybody to make illegal construction or construction contrary to rules, by-laws or sanctioned plans. The law does not give an authority to the State to issue any circular contrary to law. No Government trying to be a popular Government can issue illegal orders or satisfy the people by condoning the lapses committed by the common public and if the law is applicable in its uniformity to all concerned, then, an exception of wrongdoers cannot be carved out for granting the benefits to the action, which is illegal and would continue to be illegal. No law, which regulates the constructions, would give an authority to the State Government to issue a general circular to compound the wrong or regularise the illegality. If such power is deemed to vest in the Government, then, it would lead to anarchy, it would lead to failure of the constitutional machinery, it will create a situation of lawlessness.

6. When the laws relating to constructions say that a particular officer or authority would be entitled to grant sanction for construction and beyond such sanction, no construction would be made, then, the State would have no authority to issue a general order that all illegal constructions be regularised. Consider the case of a person, who seeks permission from the authority to

make some additional construction, but, the same cannot be allowed in his favour because grant of such permission would be contrary to law and take the case of a person, who without any authority of law, raises construction and gets it regularised, would the good man not feel the brunt of the State's wrong, would he not start behaving in a nasty manner, would he not try to become bad because now he knows that the policy of the Government is to protect the wrong, regularise the illegality and do nothing in favour of the people, who seek legal permission or feel themselves bound by law.

7. A fair understanding of the Resolution dated 2nd February, 1980 (Annexure-D) would make it clear that after taking into consideration the prospectives and consequences and the provisions of law, the Government was of the opinion that any illegal construction if was raised prior to 2nd February, 1980, then, the same may be regularised.

8. Undisputedly, in the present matter, illegal constructions raised prior to 2nd February, 1980 have been regularised. The construction in dispute has been raised after 2nd February, 1980. The Government Resolution would not authorise anybody to raise illegal construction and then, come to the Collector for its regularisation. If the Government Resolution dated 2nd February, 1980 is read

in the manner as the learned Counsel for the petitioner wants to read it, it would lead to a situation of impossible return. Everybody would make illegal construction and would come to the Collector or some competent authority and would ask for regularisation of the illegal construction. The Resolution is not a license in favour of any person to raise illegal constructions. The Resolution, in fact, provides solace in favour of all those persons, who had already raised the construction prior to 2nd February, 1980.

9. Under the circumstances, I am unable to hold that the orders passed by the Collector or the Deputy Secretary (Disputes) are illegal.

10. The petition is dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S.Garg, J.]

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